


United States Bankruptcy Court
Eastern District of Washington

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DATE: November 29, 2002

FROM: Ted McGregor 

TO: Bankruptcy Advisory Committee; Chief Judge Williams, Elizabeth McBride, Judge Rossmeissl, Judge Klobucher, Jake Miller, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Greg Beeler, Erik Bakke, Dan O'Rourke, Jan Armstrong, Bonnie Charney, Jennifer Aspaas

SUBJECT: Standing Advisory Committee Meeting

The Standing Advisory Committee of the court met in Spokane on October 25, 2002. Members present were Judge Williams, Judge Rossmeissl, Lisa McBride, Dan Brunner, Dan O'Rourke, Bonnie Charney, Rolf Tangvald, Jennifer Aspaas, Jan Armstrong, Erik Bakke and Ted McGregor, members not present were Judge Klobucher, Greg Beeler and Ford Elsaesser. Also present were Tap Menard, Bev Benka, Joe Harkrader, Mike Todd and Jon Wyss.

Following welcoming remarks the judges reported that things seemed to be going well in all chambers, but that they were very busy. Judge Williams reported that she and Judge Klobucher were beginning to sign orders electronically using a program dubbed "E-Docs," but due to technical reasons, Judge Rossmeissl was not yet able to participate, but would have the capability soon. Judge Williams thanked the Association for funding the law clerk position currently held by Andrew Schillinger; both of the judges noted that he is very well qualified and are happy to have him working.

Next, Lisa McBride reported the association is in good financial condition and that NOTES would soon be published. She also reported that the third and final mediation seminar in the series would likely occur in May 2003. It was reported that planning and coordination is underway for the 2003 meeting of the Association at Sun Mountain. One speaker likely would be a CPA; a topic also being explored was the Fair Debt Reporting Act. The session would also include at least one hour of ethics credit.

Ted reported that statistically the Eastern District is one of the few courts that had not suffered a decline in filings, this year filings will exceed 10,000. He noted that his office has undertaken a quality control initiative to insure that images are correct. He said that from a review of some

8000 items entered, only 10 errors were found. He said that the standard used in the office is 100% accuracy, no errors. He also noted that to insist on no errors is important since correcting errors in an electronic system is most difficult.

Next he addressed the budget, and noted that since no budget has been enacted, the courts are operating on a continuing resolution basis, which is at 95% of the 2002 budget. He said since filings have remained high and the office is manned at only 71% of allocated positions, he expected no fiscal problems unless Congress should hopelessly under fund the judiciary.

Ted next distributed documents indicating the various standards used for the completion of tasks. He noted that due to the application of various automation initiatives, once a new case is filed it is available for viewing on the website within 24 hours of the filing. He also noted that due to using the BNC (Bankruptcy Noticing Center), notice is sent out within five days of filing. He also reported that creditor lists are now being provided to the court in floppy disk format, and that this initiative has increased the speed and the accuracy of getting that data onto the court's data base. He also reported that of the electronic documents filed, 39% were in Chapter 13s and 28% were in Chapter 7 cases. ECF, the national electronic filing program, is expected to be introduced in the Eastern District in late 2003, and actually going "live" about 10 months later.

Next he advised the committee that the request for comments to proposed changes to FRBP 9014 had started and made available information as to how comments could be made. He also reported that the court had adopted three new local rules; 1017-2, 7041-1, 9014-1, and abrogated local rule 5005-2.

Lisa McBride inquired as to the 7 cents per page charge for downloading documents from RACER. Ted noted that due to technical difficulties, the court was unable to impose the charge for RACER; he did note that a charge was being made for PACER, which is not for images. Jon Wyss noted that the way that ECF works on the charge is when a document is filed electronically, all parties who get notice of that filing also get a "free look." Any other views are charged at the 7 cents a page, though there is a maximum charge.

Jennifer Aspaas said that she used ECF in the Western District and she gets one free look, and print if desired. The docket is more by set code and does not contain as much information as is available in the Eastern District. In ECF the attorney in fact, puts in the docket information and therefore is as accurate as the attorney makes it. Under ECF when an attorney signs up to file documents electronically, that attorney also agrees to receive electronic notices.

Ted said that once fees are imposed, it will be handled through San Antonio. He noted that the court is permitted to exempt certain entities from the fee, such as case trustees. Jan asked if the billing could be made "case specific" for billing ease in the office. Erik, who also uses the ECF said that by the use of a billing code he thought such was possible.

Jake gave the report from the office of the United States trustee. He reported that his office had been assigned an additional lawyer by the name of Gary Dyer. He said that Gary would be concentrating on Chapter 11 cases, and Gary Farrell would continue his work on substantial

abuse matters. Jake also said that his office had selected four cases from 300 in which to perform a rather intensive audit. This was part of a national pilot program and that nationally 20 cases had been so included. Bonnie asked if the expected results were justified by the expense. Jake replied that the benefit was not that any specific fraud or abuse might be uncovered in the four cases, but that the threat of an audit likely would make the system more honest. Dan Brunner asked how many wrong social security numbers are being uncovered now that there is a 100% check of this information at the meeting of creditors. Jake said they found 83 out of 5000 cases, or 1 ½ %. Jake also noted that although some of the incorrect numbers could be attributed to simple error, some of them were probably fraudulent. Judge Rossmeissl asked if this kind of intense scrutiny would lead to more prosecutions, to which Jake replied probably not unless the abuses were quite substantial.

Jake also reported that the Bankruptcy Reform Bill was on hold.

Next, Dan Brunner gave the report from the Chapter 13 office. He said that approximately 71% of all documents filed by his office are electronic. He also explained that he was anxious for the startup of a private noticing center, similar to the BNC, that will allow his office to have notices sent without needing to prepare any paper by his office. He also related that the electronic filing process being used between his office and the court has been adopted by 27 Chapter 13 offices around the country. Ted noted that the process developed is compatible with ECF, and that the office in San Antonio had modified it so that it works with their office, which is an ECF court.

Dan explained that his office had stopped publishing statistics for use by the Chapter 13 Subcommittee since he thought they were redundant with information available from the Clerk's Office. He further noted that this had been discussed at the 13 meeting and that he and Ted were going to get together to publish just one report. Judge Rossmeissl asked if the information might not be broken down by region within the district so that a more detailed picture could be seen where problem areas might be. He had noted that there seemed to be a bit of a backlog in Wenatchee cases. Bev Benka said that she was recently assigned those cases and by the end of December, the numbers would be greatly reduced. Jan observed from statistics furnished by Dan that confirmed 934 cases out of 986 cases in under 180 days was phenomenal compared to three to four years before.

Dan O'Rourke inquired about notices that were sent without motions. Dan responded by saying this was in line with local rule requirements, but that the notice should contain sufficient information so the recipient could make an informed decision whether or not to object. Erik asked as regarding statistics if there could not be a period of 90-120 days included. All thought that was a good idea and Dan said he would so include that period in the reports. The discussion also suggested that not only should unconfirmed figure be provided, but also data on confirmations.

Dan reported that generally no backlog was being built up with very few cases more than nine months old, although he supported a plan to set confirmation hearings at the time of the filing of the case as a method to make the process more efficient and less cumbersome. It had been noted that such a proposal had been discussed by the 13 committee, but it had been decided the

proposal needed more study. Judge Williams noted that a statistical report describing length of time from filing to confirmation would be helpful. Joe Harkrader said that he felt the important issue is how long after a case is filed that it comes up for confirmation. He further noted that a case should come up for confirmation the first time at a certain period of time from filing. A report that provided average time to confirmation might be less helpful than a report of average time to first hearing. It was generally agreed that the sooner a case was put on a confirmation docket, the sooner it would be confirmed.

The next report came from Jan Armstrong who reported that the Chapter 13 Fees Working Group had been working on language changes in the form Chapter 13 plan regarding the payment of attorney fees. He reported that the group met on a number of occasions and had developed a proposal that was agreeable to all but needed to be able to be compatible with the Chapter 13 software. He presented to the group, the changes to the form plan that had been agreed to by the working group and that would be compatible with the Chapter 13 office's software. He explained the general schema was there would be a "default" provision that was felt to be what most attorneys elected, and a series of additional choices that would steadily decrease the amount of subordination of the attorney's priority than the plan would permit. It also included an "other" choice that could be used to not permit any subordination. It was pointed out that the need for the provisions at all was to address the shortfall that occurs if and when the debtor misses or makes a short payment into the plan. Jan also explained that the working group's suggestion was to have the plan contain a general comment, that failure to object to the plan would not affect the creditor's rights to seeking other relief should the debtor not make the required plan payments.

The group by a 6 to 2 vote supported the recommendations of the Working Group as to proposed changes to the form Chapter 13 plan. Ted said he would make the changes and present them to the court for approval.

The next topic discussed was a proposed change to LBR 2083-1(l)(6) regarding pre-confirmation adequate protection payments. The Fees Working Group had also discussed this provision and suggested a change so that the pre-confirmation distributions would allow the trustee to make these kinds of payments without the need for a specific court order. A proposed local form was included. Also proposed was that the description be changed from pre-confirmation adequate protection payments to pre-confirmation distributions. Jake Miller rose in opposition indicating that the code allowed for no such pre-confirmation distributions. With only abbreviated discussion the issue was sent back to the committee for additional discussion.

Next, Judge Klobucher raised concerns over the recently enacted flat fee provisions of LBR 2016-1. First was LBR 2016-1 (a) that was changed so that notice was only required where an application was in excess of \$1,000. Ted explained that the change followed the national rule on the subject that had recently been changed. Judge Klobucher asked if the intention of the rule was to eliminate the old \$1,000 provision, or if that remained as an option. Ted explained that the new rule only had two options for attorney fees; flat fee or itemization. He also noted that the new rule did contain provision for those attorneys who chose to itemize, that by estimating the amount of fees, the trustee would set that amount aside to be paid once an order allowing the fees had been signed. The third issue raised was whether or not costs were included in the flat fee.

He noted that the rule was silent, but the form flat fee agreement included expenses. Following discussion, it was decided that this issue should be looked into by the appropriate committee, but perhaps the kinds of costs able to be included in a cost bill should be allowed with other expenses included in the fee itself.

Ted next introduced a proposed local rule concerning the 1201 and 1301 co-debtor stay. He said that he was seeing more proposed orders seeking relief from these stays, almost exclusively in the Chapter 13 area. He said there was no national rule on the subject. The Fees Working Group had also addressed this issue and supported the proposed local rule. Jake Miller objected to the rule in that he felt some of the provisions might violate the code sections. The group decided to ask the Fees Working Group to take another look and consider Jake's concerns.

Jennifer next reported on the work of the Lift Stay Working Group. She reported that the group's recommendation was to leave the principal portions of LBR 4001-1 intact. However, question was raised as to whether or not sub-section (b) of LBR 4001-1 should be changed to require that where only the stay as to the debtor is involved, notice should be sent to the case trustee. In the discussion it was noted that the practice is that where the debtor stipulates to a lifting of the stay only as to him or herself, no involvement of the trustee is required. The committee was unable to come to consensus and it was sent back to the working group for additional discussion and study. Bonnie was added to the group.

Rolf reported that the U.S. Attorney's office is quite busy. He said that five new attorneys had been hired and that there has been a 25% increase in work, particularly focusing on terrorism and criminal activity. He said that staffs had also increased at ATF and the FBI. He said effort is increased in preventing terrorism as opposed to reacting to it. The civil side of the office is also very busy; tort cases seem to be larger. Bankruptcy fraud and abuse is still looked at, but the decision to proceed is based on comparing the cases to other cases.

Ted next discussed the fact that in June 2003, the terms of all rotating members, with the exception of Jennifer, will expire. The thought was to include solicitation for members in the next issue of NOTES and also by a direct mail. Ted said that publishing comment periods for proposed new and changes to local rules, which in the past was mainly done by using NOTES, would now be done by a direct mailing.

The last issue to be discussed was the make up of the Chapter 13 Sub-committee. The sub-committee had looked at the matter but was unable to come up with any recommendation, and simply passed it to the Advisory Committee to address. Judge Rossmeissl reviewed the work of the sub-committee, and concluded that due to the amount of material covered at its last meeting, the membership issue really had not been given sufficient time. He suggested that the issue be sent back again for further discussion, which the group agreed to.

Ted McGregor reviewed the action assignments established by the committee which were:

Lift Stay Working Group to reconsider recommendation that trustee be required to sign off on any stipulated order lifting the stay as to the debtor.

Review proposed changes of LBR 2083-1((1)(6) pre-confirmation adequate protection payments by fees working group;

Review of Flat Fee agreement relating to costs permitted by Fees Working Group;

Review draft of proposed LBR 4001-2 relating to the co-debtor stay by Fees Working Group;

Make up of Chapter 13 Sub-committee to be reconsidered by the Chapter 13 Subcommittee.

The next meeting of the Advisory Committee was set for Friday, March 7, 2003 in Yakima. Exact time and location will be announced later.